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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN
ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER
DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Afghanistan prepared
by the Special Rapporteur, Mr. Felix Ermacora, in accordance
with Commission on Human Rights resolution 1987/58

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I. GENERAL INTRODUCTION

1. When he was appointed by the Commission on Human Rights in 1984, the Special Rapporteur was instructed "to examine the human rights situation in Afghanistan, with a view to formulating proposals which could contribute to ensuring full protection of the human rights of all residents of the country, before, during and after the withdrawal of all foreign forces". The Special Rapporteur's mandate has regularly been renewed by various subsequent resolutions of the Commission on Human Rights and the Economic and Social Council. Since then, he has submitted three reports to the Commission on Human Rights (E/CN.4/1985/21, E/CN.4/1986/24 and E/CN.4/1987/22) and three reports to the General Assembly (A/40/843, A/41/778, and A/42/667 and Corr.1).

2. Pursuant to Commission on Human Rights resolution 1987/58 and Economic and Social Council decision 1987/151, the Special Rapporteur submitted an interim report to the General Assembly in November 1987 containing preliminary conclusions and recommendations. After considering this report (A/42/667 and Corr.1), the General Assembly adopted resolution 42/135, in which it decided to keep under consideration, during its forty-third session, the question of human rights and fundamental freedoms in Afghanistan in order to examine this question anew in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

3. The Special Rapporteur accordingly has the honour to submit to the Commission on Human Rights, in the present document, his final report in accordance with Commission on Human Rights resolution 1987/58. This document describes the most significant new developments affecting human rights since the interim report was submitted to the General Assembly in December 1987. It should therefore be considered in the light of that report (A/42/667 and Corr.1), which it brings up to date.

4. In submitting his report to the Commission on Human Rights at its forty-fourth session, the Special Rapporteur wishes to emphasize that he is continuing, as in the past, to do his utmost to inform the Commission in the most impartial and most objective manner possible, with the sole aim of contributing to the improvement of the human-rights situation in Afghanistan. Because of the current political context in Afghanistan, the Special Rapporteur describes in chapter II below his activities during the period under consideration. In chapter III he evaluates the human-rights situation by analysing in particular the situation in the regions under government control and that in the regions not under government control, and the specific problem of the refugees. Lastly, in chapters IV and V, he submits his conclusions and recommendations based on his analysis of the additional information available and taking account of recent developments in the overall human-rights situation in Afghanistan.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

5. Following the renewal of his mandate by the Commission on Human Rights at its forty-third session, and in keeping with the approach he has always adopted in this respect, the Special Rapporteur, on 8 December 1987, sent a letter to the Government of Afghanistan in which he thanked it for the co-operation he had received during his visit to Afghanistan from 30 July to 9 August 1987. He also expressed the hope that that co-operation might continue to be given practical effect through a further visit whose purpose

would be essentially to obtain information that would enable him to supplement the report he was required to submit to the Commission on Human Rights at its forty-fourth session. The Afghan Government reacted positively to the Special Rapporteur's request, by a letter dated 15 December 1987. It should be noted that the preparations concerning the programme proposed by the Special Rapporteur, the length of his visit and the security guarantees for the persons interviewed by him were not made subject to any condition.

6. The Special Rapporteur accordingly visited Pakistan from 4 to 11 January 1988. During this visit, he was received, in accordance with the schedule established in close consultation with the Afghan authorities, by the President of Afghanistan, the Deputy Prime Minister - who is also Chairman of the State Committee for the Return of Refugees, the Minister for Foreign Affairs and the Minister of Justice. He also met senior officials of the Ministry of the Interior and senior prison officials. He had talks with the President of the National Front, who is also President of the Loya Jirgah and the Commission of National Reconciliation, and with former members of the Committee for the Drafting of the Constitution. In addition, he had contacts with various officials responsible for humanitarian questions, in particular, the Secretary-General of the Afghan Red Crescent Society.

7. Apart from the Province of Kabul, the Special Rapporteur visited four other provinces: Kandahar, where he visited the village of Meel, in the region of Spin Buldak near the Pakistan frontier; Herat, where he visited the Eslam Qal'eh outpost on the frontier with the Islamic Republic of Iran; Nangarhar, where he talked to officials of the refugee reception centre and teachers at the University of Jalalabad and went to the Torkham frontier post; and Paktia, where he visited Khost and talked to senior civil and religious officials. Lastly, during his stay in Kabul, the Special Rapporteur paid an impromptu visit to a mosque.

8. In keeping with the approach which he has always adopted in this respect and in order to obtain the most broadly-based information possible, the Special Rapporteur later visited Pakistan from 5 to 11 February 1988. During this visit, he had talks in Islamabad with representatives of the Ministry of Foreign Affairs and the Office of the High Commissioner for Afghan Affairs; in North-West Frontier Province he visited refugee camps (Sedqi, in the district of Bannu, and Dabara, district of Dera Ismail Khan), where he had lengthy talks with newly-arrived refugees from the Zadran region in particular. He also visited a number of hospitals which had been specially set up to treat wounded Afghans.

9. During his visit to North-West Frontier Province, the Special Rapporteur travelled to the Khyber Pass outpost where he noted the freedom of movement across the Pakistan-Afghan frontier, in particular by members of the Shinwari tribe.

10. In order to inquire into specific cases of torture, the Special Rapporteur visited the Psychiatric Centre for Afghans in Peshawar, where he interviewed nine patients. In addition, the Centre placed at his disposal a complete file containing descriptions of several persons and covering the period up to the time of his visit.

11. Also in Peshawar the Special Rapporteur received a number of leaders of opposition movements, with whom he discussed the development of the overall situation in Afghanistan.

12. Lastly, the Special Rapporteur was given further information on the situation by private individuals, including Mr. Sayd B. Majrooh, former Dean of the University of Kabul, who was murdered on 11 February in Peshawar, and Mr. Hassan Kakar. He also had talks with representatives of humanitarian organizations.

13. At this point the Special Rapporteur wishes to place on record the particularly valuable assistance and broadest possible co-operation he received from the Afghan and Pakistan authorities.

14. For the purpose of drafting the present report, apart from the information he obtained in the course of the two visits to Afghanistan and Pakistan, the Special Rapporteur has followed the course of events since December 1987 and systematically examined the written information he has received from private individuals and/or humanitarian organizations represented in the region and dealing with questions relating to his mandate. He has also studied the report on the human rights situations submitted to the United States Senate, but has been unable to check the allegations of massive and systematic violations of human rights in Afghanistan contained in that report.

III. EVALUATION OF THE PRESENT HUMAN RIGHTS SITUATION

15. In his previous six reports to the Commission on Human Rights and the General Assembly, the Special Rapporteur considered the human rights situation independently of the armed conflict on the one hand, and the human rights situation resulting from the armed conflict on the other. After being allowed to enter Afghanistan, he was able to form a more complete picture of the situation and to draw a distinction between the human rights situation in the government-controlled areas, in areas controlled by opposition forces and in combat areas.

16. In this connection, the Special Rapporteur wishes to recall that, in his interim report, he stated that the progress made in some parts of the country, where certain improvements might be acknowledged, could constitute a first step in the process of restoring human rights in Afghanistan. Bearing that in mind, the Special Rapporteur recommended the following (A/42/667, para. 123):

"(a) Political prisoners who have been released as a result of the amnesty should receive an authentic document attesting to their release;

"(b) These former prisoners should be granted the right to reoccupy their posts and to resume their professions;

"(c) Those former prisoners whose cases are to be reopened and who are no longer found guilty should be compensated;

"(d) All parties to the conflict should apply humanitarian law fully; captured members of the resistance should be treated as prisoners of war under the Geneva Conventions;

"(e) ICRC should be given full access to any prisoner, prison or place of detention under the control of resistance movements;

"(f) The Government should conclude an agreement with ICRC as soon as possible allowing that organization to carry out regular inspection of prisons and places of detention and to meet prisoners on a regular basis, in accordance with its established criteria."

17. In the course of his latest visits to Afghanistan and Pakistan, the Special Rapporteur was informed that there had been bombardments, in particular during the latest offensive in Khost and that there had been a significant reduction in civilian casualties. He learned that the number of returnees had increased slightly, although the number of refugees in Pakistan had also increased following the latest offensive in Khost. According to additional information, torture, in the meaning of the relevant international instruments, was used less during interrogations, although two cases of torture were brought to his attention. Prison conditions had not yet improved, but the International Committee of the Red Cross (ICRC) had been allowed to start inspecting prisons in accordance with its established criteria.

18. Before making an in-depth evaluation of the present human rights situation, the Special Rapporteur wishes to comment on the text of the new Constitution which was adopted on 30 November 1987 by a Loya Jirgah. In his interim report to the Assembly, he commented on the draft text (paras. 21-29) concluding (para. 117) that, even if the draft constitution were to be adopted as it stood, its adoption could not be considered as a free act of self-determination unless it included genuine representation of the refugee population to create the "constituent power".

A. Analysis of the new Constitution

19. The main problem concerning the Constitution is precisely the question of the legitimacy of the present "constituent power". The legitimate power of the Loya Jirgah is limited by its composition. In this connection the Special Rapporteur notes that, since the majority of the members of the Loya Jirgah represented the party and high State authorities, whereas refugees and persons from the opposition movements abroad were not represented, the Loya Jirgah cannot be said to have represented the Afghan people as a whole.

20. The Special Rapporteur feels obliged to analyse the Constitution as a political instrument. A multi-party system now allows political parties to be formed, provided that their platform, charter and activities are not opposed to the provisions of the Constitution and the laws of the country, and the leading role of the People's Democratic Party of Afghanistan (PDPA) has been abrogated. The Constitution contains a wide catalogue of human rights, which correspond to those enumerated in the International Covenant on Civil and Political Rights, and provisions to the effect that international law takes precedence over domestic law. Provision is also made for the election of a national assembly six months after its adoption.

21. Although the text of the Constitution is welcome, from the human rights point of view it has certain deficiencies: (a) the multi-party system is governed by an umbrella organization, the National Front, which has to play a leading role in the Government's policy and in the fulfilment of the principles of the Saur revolution; (b) many of the human rights proclaimed are not effective per se, since they require enabling legislation which has

not yet been enacted, although the law concerning political parties exists, (c) there is no system for the protection of human rights and it would appear that it is precisely those repressive elements that cause so much hardship to so many victims, i.e. the revolutionary tribunals, the revolutionary Prosecutor and the notorious secret police (KHAD), which have been maintained, (d) no provision is made for free, secret and universal elections to the National Assembly which would correspond to article 25 of the International Covenant on Civil and Political Rights, or to the principle contained in article 43 of the Constitution of 1964.

22. Article 5 of the new Constitution no longer gives the PDPA a constitutional guarantee. However, under article 6, the National Front should "unite political parties". As the Special Rapporteur already mentioned in his interim report (para. 25), experience of national fronts in other States has shown that they can endanger the freedom to form political parties. According to the regulations of the National Front adopted on 15 January 1987, the Front unites all national and democratic forces and elements in the country and struggles towards realization of the Saur revolution ideals. This regulation and specific provisions of the Constitution indicate that the National Front has a leading role in the national policy of the country. However, the Special Rapporteur was informed that political parties need not necessarily adhere to the National Front. None the less, without adherence to this umbrella organization it might be difficult for political groups to play an effective part in the democratic policy of the country.

23. Article 2 of the new Constitution proclaims the sacred religion of Islam as the religion of Afghanistan. According to this article, "no law shall run counter to the principles of the sacred religion of Islam". This gives a legal predominance to Islam to which no reference was made in the draft constitution.

24. The provisions concerning human rights contained in the new Constitution are divided into two parts, one containing provisions dealing with economic, social and cultural rights (arts. 13-32), and the other provisions dealing with civil and political rights (arts. 33-64). Most of the rights which normally form the content of a human rights catalogue are included in the list. However, the Constitution has some deficiencies, particularly concerning states of emergency, the implementation machinery for these rights and the reservation system which governs many basic rights. Article 144 provides for the declaration of a state of emergency. According to paragraph 4 of that article, articles 30, 44, 45, 46, 49, the last element in article 50, articles 51, 53, and 60 will be suspended or limited in a state of emergency. These articles concern compensation for expropriation of property, inviolability of residence, privacy, compensation for damage resulting from administrative acts, freedom of thought and expression, the right to strike, the right to petition, forced labour and the right to travel abroad and return home.

25. The Constitution does not contain any provision which would indicate that the existing system is to be changed to bring it into line with article 2 of the International Covenant on Civil and Political Rights. On the contrary, articles 108 and 117 refer to special courts and to the office of a special attorney which could be set up by the State "within the unified system of the judiciary" and "within the unified attorney system" respectively. This

system, established by revolutionary decree, has contributed greatly to arbitrary arrests, ill-treatment and torture and to convictions following trials which could not be considered fair. In the opinion of the Special Rapporteur, it is regrettable that the new Constitution does not contain any rule providing for the abolition of this special judicial system.

26. The new Constitution also contains provisions concerning the Loya Jirgah. The composition of the Loya Jirgah is now such that the State and the various political parties will be duly represented. In accordance with article 66 of the Constitution, the Loya Jirgah consists of: members of the National Assembly; 10 people's deputies from each province and its equivalent; the governors of provinces and the mayor of Kabul; the prime minister, deputy prime ministers and members of the Council of Ministers; the chief justice, deputy chief justices and judges of the Supreme Court; the attorney-general and his deputies; the chairman and members of the Constitutional Council; members of the executive board of the National Front; and a maximum of 50 persons from among prominent political, scientific, social and spiritual figures to be appointed by the President on the basis of the recommendation of the secretariat of the National Front. The latter group of a maximum of 50 persons need not necessarily be linked with the political system; however, as a group, they would not constitute a majority. The transitory rules of the Constitution do not foresee any arrangements for incorporating representatives of the millions of refugees when they return during or after the withdrawal of the foreign troops.

27. A new element for implementation of the internal right to self-determination is the setting up of a national assembly (chap. 6 of the Constitution). However the Constitution does not contain any provision concerning the election system or the basic safeguards normally associated with free elections. Nor are there any provisions in the election system for the integration of refugees who return. The National Assembly should be constituted within six months of enactment of the Constitution, i.e. at the end of June 1988. If the refugees are not permitted to vote, the results could be criticized from the standpoint of the democratic legitimacy of the newly elected Assembly.

28. The right to freedom of expression, freedom of assembly, freedom of movement, freedom of association and other human rights are now guaranteed by the Constitution. However, the Government should take the necessary steps to adopt legislation to give effect to these rights, although it should be recognized that many of them cannot yet be brought into effect owing to the current situation in the country.

29. Although under article 64 of the new Constitution the State is to provide the necessary conditions for citizens to exercise their fundamental rights, there are no signs that Afghanistan intends to create an effective human rights system under which a person who feels that his rights have been violated may address an independent authority.

30. A positive element in the new Constitution is article 145, which states that "international treaties previously entered into by the Republic of Afghanistan and conventions joined by it, if found repugnant to the provisions of the laws of the Republic of Afghanistan, shall have ascendancy". The Special Rapporteur notes with great interest that United Nations conventions

are considered by Afghanistan as the fundamental framework for examination of the situation with respect to human rights. In this connection, it should be noted that Afghanistan has ratified the following international instruments: International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on the Suppression and Punishment of the Crime of Apartheid; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, as already stated in previous reports, international instruments must be implemented and should not remain a dead letter.

B. Situation in government-controlled areas

31. The Special Rapporteur has so far visited the following government-controlled areas: Kabul, Herat, Mazar-i-Sharif, Kandahar, Jalalabad and Khost.

32. The human rights situation in the government-controlled areas has been characterized since 1987 by what the Government refers to as the policy of reconciliation. The Special Rapporteur is of the opinion that the human rights situation in these areas has improved since his previous reports. The policy of reconciliation has brought about the following advances concerning human rights: amnesty decrees; changes in the reforms instigated following the Saur revolution; decrees concerning the return of refugees; the convening of a Loya Jirgah as a means of legitimation of power; adoption of the new Constitution and the pronouncement of a unilateral cease-fire.

33. The Special Rapporteur recognizes the efforts made to introduce the policy of reconciliation and its possible impact on human rights. However, he is of the opinion that the policy has not yet had the desired results. Although there are no longer reliable reports of systematic torture in prisons in the Kabul area, the Special Rapporteur has received some reliable reports of cases of torture alleged to have taken place in the Province of Ghazni. Ill-treatment in prisons has not been eradicated during the period of reconciliation. Reliable reports refer to killings of political prisoners, said to have taken place in January 1988 outside Kabul.

34. The Government claims that, since the proclamation of national reconciliation, as a result of the amnesty decrees, 7,332 prisoners have been released. The Special Rapporteur met some released prisoners who informed him of their experiences, in particular during their most recent period of detention. Governmental sources stated in January 1988 that there were still 3,147 political prisoners serving prison sentences. According to information communicated to the Special Rapporteur by the Ministry for Security on 24 February 1988, 545 persons were detained or under investigation; of these 170 had been sentenced, including three foreigners, 207 were under interrogation, including six foreigners, and 168 were held pending trial, including four foreigners.

35. The Special Rapporteur has also been informed that, as a result of the amnesty decree of 30 November 1987, 515 prisoners have been released from Pol-i-Charkhi gaol as well as Balkh and Farah provincial gaols.

36. In the course of his visit to Afghanistan the Special Rapporteur was informed that the prison population in Kandahar was 371, including 20 in a detention centre.

37. According to statements received in Pakistan by the Special Rapporteur from recently released prisoners of conscription age, it was again alleged that they had been taken directly to the army, in some cases, without being allowed to inform their families. After serving a certain period in the army, many had deserted and sought refuge in Pakistan. Moreover, as the Special Rapporteur already mentioned in his interim report, with the exception of one case, they had not been given any document certifying to their release as a result of the amnesty. However, they were all in possession of the verdict on the basis of which they had been detained.

38. The Special Rapporteur has also received information - which he is not in a position to verify - concerning the alleged mass execution of 12 political prisoners, including two women, whose bodies were discovered in December 1987 and identified as former students of the University of Jalalabad.

39. During his visit to Jalalabad, Province of Nangarhar, the Special Rapporteur was informed by the Governor of the Province that no death sentence had been carried out during the past year.

40. The Special Rapporteur received information concerning families who had not been informed about the arrest of family members and concerning forced labour, in particular on the cases of some 3,000 youths who had allegedly been forced to work in specific industries.

C. Situation in the combat areas

41. The reconciliation process has not proved sufficient to put an end to the hostilities. While in some areas the Government has been able to establish so-called peace zones, where it came to local agreements with the opposition forces and hostilities ceased, in other areas heavy fighting has continued. The Special Rapporteur witnessed the consequences of such fighting, in particular in Logar, Kandahar and Herat. During his visit to Kandahar, Herat and Khost, the Special Rapporteur was personally able to see considerable destruction. He is not in a position to verify who was responsible for such destruction; indeed, a careful investigation would be needed. In addition, according to reliable sources, over 14,000 civilians were reported to have been killed in 1987. The Special Rapporteur also heard allegations concerning the killing of nine members of opposition movements and seven children in the village of Kolalgu in the Province of Paktia in January 1988. According to an eyewitness who subsequently appeared before the Special Rapporteur, the incident occurred after Afghan and Soviet troops entered the village, conducted a house-to-house search and blew up a mosque, in which members of opposition movements had been handcuffed and killed.

42. In visits to outposts in the North-West Frontier Province in Pakistan, the Special Rapporteur had occasion to interview some of the 8,000 refugees who had just fled the Khost area.

43. In his interim report, the Special Rapporteur noted that, although the Government had announced a cease-fire, the armed conflict appeared to have intensified. This has been confirmed by the recent offensive in Khost and by reliable reports.

44. The Government has followed a policy of reconciliation by creating the so-called peace zones referred to in paragraph 41 above. In accordance with the agreements it has reached with opposition groups, to stop the fighting, the Government has withdrawn its troops from the so-called peace zones leaving only police forces to safeguard law and order. The Special Rapporteur was told that several such peace zones had been set up in the country. In this context, the Government claims that many thousands of members of the opposition movements have joined the government forces. The Special Rapporteur was not able to verify this development.

45. In addition to the alleged cases referred to in paragraph 93 of the interim report, the Special Rapporteur was informed about an incident in which a number of civilians were killed in an act of reprisal. In December 1987 it was alleged that, in the course of 30 aerial bombings, many houses were destroyed in Ahmad-i-Chazni. In similar operations in Wardak, Helmand and Logar, civilian areas were allegedly heavily bombed.

46. The Special Rapporteur was also informed about the conviction and detention of journalists in combat areas.

47. During the period under consideration, the Special Rapporteur received no information on the use of booby-trap bombs. In his interviews in hospitals in Pakistan, he was informed that there were no cases of injuries being caused by such weapons. However, he received reports about the use of anti-personnel bombs, which were said to have the same effect as buckshot.

48. He has not yet been able to visit areas under the control of opposition movements and therefore has only second-hand information on these areas.

D. Situation of the refugees

49. The other main element characterizing the conflict is the situation of the refugees from Afghanistan. The Special Rapporteur has always focused on this problem which, linked with the question of self-determination, is, in his opinion, the main human rights problem in the current situation.

50. In his report to the General Assembly at its forty-second session (A/42/667 and Corr.1), the Special Rapporteur estimated the number of Afghan refugees at approximately 5 million. According to official estimates from the Government of Pakistan, there were 3,179,328 refugees spread over the North-West Frontier Province, Baluchistan, the Punjab and Sind as of 15 January 1988. Some 300,000 persons were still waiting to be registered in camps in Baluchistan and the North-West Frontier Province. The increase in the number of refugees is attributed to the recent fighting in Khost.

51. As already mentioned in his report to the General Assembly, the Special Rapporteur again noted that some refugees had returned to Afghanistan. Official estimates cite 111,303 returnees, divided as follows: Herat: 32,783; Farah: 4,452; Nimruz: 2,196; Uruzgan: 63; Fariab: 2,577; Ghor: 71; Badghis: 158; Jozjan: 749; Bamiyan: 560; Baghlan: 2,163; Samangan: 1,139; Balkh: 3,319; Zabul: 987; Helmand: 960; Kandahar: 14,918; Paktia: 3,025; Khost: 919; Paktika: 1,233; Ghazni: 2,647; Logar: 483; Konar: 2,153; Nangarhar: 29,333; Laghman: 1,745; Parwan: 60; Kunduz: 929; Kapisa: 79; Takhar: 20; Badakhshan: 44; Wardak: 80; and Kabul: 1,458. In this connection, as already indicated, the Government of Afghanistan has continued to take steps to facilitate the return of refugees and provide them with living and working conditions conducive to their return. During his visit to Afghanistan, the Special Rapporteur was informed that 24 reception centres for refugees had been set up so far in frontier towns and villages.

52. During his visit to Afghanistan the Special Rapporteur had occasion to visit such centres for returnees and spoke with a number of them in Kabul, Herat, Nangarhar and Kandahar.

53. The Special Rapporteur has always been anxious to establish why the refugees left their homes and why the few who have returned did so. The reasons for their decision to leave are the following: first, the occupation of the territory by foreign troops; secondly, the state of insecurity arising from the continuing bombardments; and thirdly, the impossibility, as they see it, of enjoying their rights under the current system of government in Afghanistan. The Special Rapporteur gathered a considerable amount of information during his visit to Pakistan from a wide range of refugees. Most of them stated that they would only return when the foreign troops had withdrawn and a government in which they had confidence had been established.

54. With regard to allegations concerning opposition to the return of the refugees to their country, the Special Rapporteur is of the opinion that, while in certain areas it would be difficult for them to return in large numbers, it would not be so difficult individually. Nevertheless, the mass return of refugees cannot be expected as long as foreign troops remain in Afghanistan.

55. During his visit to Afghanistan, the attention of the Special Rapporteur was drawn to the alleged opposition of the authorities of the Islamic Republic of Iran to the return of refugees. Since he has been unable to visit the Islamic Republic of Iran he cannot verify such allegations. In regard to similar allegations to the effect that Pakistan is hindering the return of refugees, the Special Rapporteur was able, once again, to see for himself that cross-border movement between Pakistan and Afghanistan is such that it is difficult to retain refugees against their will.

IV. CONCLUSIONS

56. The human rights situation in government-controlled areas has improved as compared with the situation described in previous reports. However, there are still reliable reports of torture under interrogation and killing of political prisoners. This indicates that the will of the Government to bring the human

rights situation into line with its international obligations cannot be implemented in all the regions under government control or in all branches of government.

57. After being suspended in 1987, inspections of Afghan prisons in accordance with ICRC criteria have now resumed. This is a welcome development.

58. The human rights for which provision is made in the Constitution require new legislation in order to bring them into effect; thus several political rights are not as yet implemented.

59. Religious manifestations are not restricted.

60. To the extent that it provides for the setting up of special prosecutors and special tribunals the Constitution allows for the continuation of the notorious system of revolutionary prosecutors, who have broad powers to detain persons without trial, and revolutionary tribunals. The activities of these bodies have not conformed in the past with Afghanistan's international obligations.

61. Efforts are being made by the Government to persuade refugees to return. It has set up outposts with very accurate registration methods near the Iranian and Pakistan borders as well as guest-houses to receive returning refugees. The Special Rapporteur was able to see such guest-houses in Kabul, Herat, Mazar-i-Sharif, Kandahar and Jalalabad; he was also able to visit outposts on the Pakistan and Iranian borders.

62. Whereas the Government states that some 111,000 refugees have returned, according to official United Nations sources, the number of refugees (about 5 million) has remained the same. Newcomers arriving in Pakistan from combat areas in the north of Afghanistan and the region of Khost roughly equal the number of returnees. The Special Rapporteur was able to see many of the new refugees in Pakistan and interviewed some of them.

63. Acts of brutality in the conflict which violate humanitarian law are still being reported.

64. Acts of terrorism have resulted in innocent civilians being killed outside the areas of active hostilities in Afghanistan and in Pakistan. Such acts are imputed in Afghanistan to opposition movements and inside Pakistan to the KHAD and Afghan aviation and artillery. Two such acts must be mentioned; the deliberate killing of the ex-Governor of Baghlan and the murder in Peshawar of Mr. Sayd B. Majrooh, former Dean of the University of Kabul.

65. Foreign journalists are reported to have been detained and imprisoned. The Special Rapporteur draws the Commission's attention to General Assembly resolution 2673 (XXV) on protection of journalists in dangerous missions in areas of armed conflict.

66. The new Constitution contains important human rights elements, but its legitimization depends on that of the "constituent power", namely the Loya Jirgah. However, the Loya Jirgah did not represent the millions of refugees, their political organizations or the Mujahidin. The elections to the National

Assembly will be burdened with the same problems unless the electoral laws enshrine the same principles as those in the 1964 Constitution, namely, free, secret and universal suffrage.

67. In the present situation in which agreement may soon be reached on the withdrawal of foreign troops and the modalities for that withdrawal, the Special Rapporteur is of the opinion that the primary problem remains the return of the refugees in freedom and dignity and their participation in a government which ought to represent all sectors of Afghan society and thus guarantee the free exercise of the right to self-determination.

68. It would therefore seem imperative that concerted efforts should be made in Afghanistan to establish an interim transitional government involving all the parties concerned, i.e., the present Government, the opposition movements and the representatives of the refugees. Such a government would then have to chart the future course of the country.

V. RECOMMENDATIONS

69. The Special Rapporteur must remind the Commission that his mandate also requires him to make recommendations as to the restoration of human rights "during and after the withdrawal of foreign troops". Since the human rights situation is different in the various regions of Afghanistan his recommendations differ accordingly.

(a) Government-controlled areas

70. The amnesty should be broadened. Amnestied persons should be entirely free and should not be put under house arrest or police surveillance.

71. The Government should implement the human rights provisions contained in the new Constitution in the spirit of the International Covenant on Civil and Political Rights.

72. The system of revolutionary or special tribunals, revolutionary or special prosecutors and the KHAD should be dismantled.

73. The fate of missing persons should be investigated.

(b) Areas not under government control

74. The full assistance of specialized agencies and non-governmental organizations should be extended to areas not yet under government control. ICRC should be guaranteed free access to all places in which humanitarian action is required.

75. Opposition movements should find a way to release all prisoners under their control.

(c) Combat areas

76. The withdrawal of foreign troops should be accompanied by a universal cease-fire in conformity with all relevant rules and the parties to the

conflict should adhere strictly to the Geneva Conventions of 1949 or, if they are not parties thereto, they should at least implement article 3 of these Conventions.

77. As already stated in paragraph 134 of his report to the Commission on Human Rights (E/CN.4/1986/24):

"In regard to the human rights situation during withdrawal of troops, adequate precautions should be taken to ensure the protection of all civilians, in particular women, children and elderly persons. The international community and humanitarian organizations, such as ICRC, should be invited to supervise this protection and to furnish humanitarian assistance, wherever needed".

(d) The refugee problem

78. The refugees outside Afghanistan should be completely free to decide about their return and no obstacle whatsoever should be created to prevent them from crossing the border at any of the official outposts.

79. Conditions should be created for refugees inside Afghanistan to return to their homes so that the changes in the demographic structure of the country may be redressed.

80. Elections to the National Assembly should not be held in the presence of foreign troops; the government in Afghanistan should be genuinely representative.

81. Journalists should be treated in accordance with General Assembly resolution 2673 (XXV) on protection of journalists in dangerous missions in areas of armed conflict.

82. The Special Rapporteur is of the opinion that, as far as the establishment of a system of human rights protection is concerned, the United Nations can play a useful role. In post-war Afghanistan, it will be essential to adopt concrete measures aimed at securing the observance of human rights. It will be necessary to introduce appropriate legislation and to establish monitoring mechanisms and essential infrastructure to safeguard human rights. In this process, the United Nations may advise and provide assistance through the advisory services programme in the field of human rights. A pilot programme could be envisaged and Afghanistan could become a test case for the effectiveness of the advisory services system. At this juncture, the Protecting Powers system for safeguarding human rights, as provided for in articles 9 to 11 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, should be implemented.

83. Given the geopolitical situation of Afghanistan and the present conditions, the Special Rapporteur believes that, if the country were to adopt the status of permanent neutrality, new perspectives for the peaceful existence of Afghanistan would be opened. The Special Rapporteur has recommended this course of action several times in his previous reports, on the basis of his experience as a citizen of a country with that status.